

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA

- v. -

KENNETH STARR,

10 Cr. 520 (SAS)

Defendant.

-----X  
VICTOR LEVY and RUTH LEVY,

Petitioners,  
-----X

**VERIFIED PETITION FOR  
MODIFICATION OF PRELIMINARY ORDER OF FORFEITURE**

Petitioners, Victor Levy and Ruth Levy, by and through their undersigned counsel, hereby petition for a hearing, pursuant to 21 U.S.C. § 853(n) and Federal Rule of Criminal Procedure 32.2(c), to adjudicate the validity of all right, title and interests in the real property and appurtenances known as 433 East 74<sup>th</sup> Street, Unit 1C, New York, New York, 10021, together with all improvements and attachments thereto (the “Subject Property”) which is the subject of the Court's Preliminary Order of Forfeiture, filed February 23, 2011.

**BACKGROUND**

In or about April 2010, Colcave LLC, a company owned by the defendant Kenneth Starr, purchased the Subject Property. Thereafter, on May 17, 2011, Victor Levy and Ruth Levy provided Colcave LLC with \$2,000,000 in connection with the closing of a Second Mortgage on the Subject Property (the “Second Mortgage”). The Second Mortgage was recorded on May 27, 2010 at 16:30 in the Office of the City Register of the City of New York.

On June 10, 2010, an indictment was returned against the defendant Kenneth Starr by a grand jury in the Southern District of New York. The indictment contained a forfeiture allegation providing notice of the Government's intent to seek forfeiture of any and all property constituting or derived from any proceeds obtained directly or indirectly as a result of the allegations contained in the indictment.

On September 10, 2010, the defendant Kenneth Starr pled guilty to Counts Nine, Twenty-One and Twenty-Two of the Indictment pursuant to a plea agreement with the Government. Under the terms of the plea agreement, the defendant Kenneth Starr, agreed to forfeit to the United States all of his "right, title and interest" in the Subject Property.

On February 23, 2011, the Court issued a Consent Preliminary Order of Forfeiture. The Subject Property is the property subject to forfeiture to the United States pursuant to the Consent Preliminary Order of Forfeiture.

### **CLAIM**

Victor Levy and Ruth Levy are the owners of a Second Mortgage on the Subject Property by virtue of their having disbursed \$2,000,000 in good faith to Colcave LLC on May 17, 2010 in connection with the closing of the Second Mortgage on the Subject Property. As such, Victor and Ruth Levy have a second priority interest to the Subject Property, and make this claim to the Subject Property to the extent of any outstanding indebtedness, including any applicable fees, interest and penalties, to them, as mortgagees arising out of the Second Mortgage.

Victor Levy and Ruth Levy are bona fide purchasers for value of the Second Mortgage on the Subject Property, pursuant to 21 U.S.C. § 853(n)(6)(B). As

such, the Victor Levy and Ruth Levy mortgage loan is secured by the Subject Property, Victor and Ruth Levy's interest in the Subject Property is not subject to forfeiture, and they are entitled to any indebtedness to them arising out of the Second Mortgage, including any applicable fees, interest and penalties, remitted to them as a second priority of any sale of the Subject Property. At the time they acquired the Second Mortgage, Victor and Ruth Levy did not know and were reasonably without cause to believe that the Subject Property was subject to forfeiture because their rights to the Subject Property were acquired before notice of forfeiture of the Subject Property.

Victor Levy and Ruth Levy are innocent owners of the Second Mortgage because any act or omission committed or omitted that otherwise might make the Subject Property forfeitable was committed or omitted without their knowledge or consent. Accordingly, pursuant to 21 USC 853(n)(2), Victor and Ruth Levy respectfully request that the Court adjudicate their interest in the Subject Property and declare their interest in the Subject Property to be exempt from forfeiture.

#### **PRAYER FOR RELIEF**

WHEREFORE, Victor Levy and Ruth Levy respectfully request that the Court issue an order amending the Preliminary Order of Forfeiture by granting to them their interest in the Subject Property, which interest is superior to the Defendant Kenneth Starr's interest and therefore exempt from forfeiture, and providing, upon the sale of the Subject Property, for immediate payment to them, as second mortgagee, of any outstanding indebtedness, including any applicable fees, interest and penalties arising out

of the Second Mortgage, and such other and further relief as the Court may deem appropriate.

Dated: April 5, 2011  
New York, New York

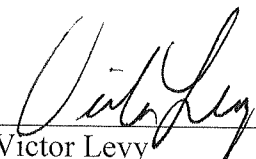
Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Robert G. Morvillo", written over a horizontal line.

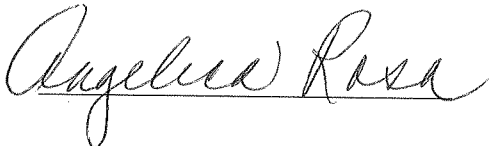
Robert G. Morvillo (RM 3132)  
E. Scott Morvillo (EM 8234)  
MORVILLO, ABRAMOWITZ, GRAND,  
IASON, ANELLO & BOHRER, P.C.  
565 Fifth Avenue  
New York, NY 10017  
(212)-856-9600  
Attorneys for Victor Levy and Ruth Levy

**VERIFICATION**

On behalf of all Petitioners, I certify that the foregoing information is true to the best of my knowledge and belief. I am aware that if any material information contained herein is willfully false, I may be subject to prosecution.

  
Victor Levy

Sworn to before me this  
5th day of April 2011



Notary Public

ANGELICA ROSA  
Notary Public, State of New York  
No. 01R04620597  
Qualified in Queens County  
Commission Expires 11/30/2013

**CERTIFICATE OF SERVICE**

E. SCOTT MORVILLO, ESQ., pursuant to Title 28, United States Code, Section 1746, hereby affirms under penalties of perjury that I am not a party to this action, am over 18 years of age and reside in New York, New York. I hereby certify that on April 5, 2011, I caused the attached Notice of Petition to be served on the government by ECF and electronic mail.

Dated: April 5, 2011  
New York, New York

  
E. Scott Morvillo